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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

GEORGE BECK,

Defendant and Appellant.

E049109

(Super.Ct.No. RIF122551)

OPINION

APPEAL from the Superior Court of Riverside County. John D. Molloy, Judge.

Affirmed.

William D. Farber, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

A jury found defendant guilty of possessing marijuana for sale. (Health & Saf. Code, § 11359.) Defendant admitted suffering four prior felony convictions that resulted in prison terms. (Pen. Code, § 667.5, subd. (b).) Defendant also admitted suffering three prior strike convictions. (Pen. Code, §§ 667, subds. (c) & (e)(2)(A),

1170.12, subd. (c)(2)(A).) The trial court sentenced defendant to state prison for a determinate term of four years and an indeterminate term of 25 years to life. Pursuant to *People v. Wende* (1979) 25 Cal.3d 436, defendant's appellate counsel asks us to examine the record to determine if there are any issues deserving further briefing. Defendant contends that two issues deserve further briefing: (1) the alleged violation of his *Miranda*¹ rights; and (2) the lack of a search warrant. We find no issues deserving further briefing and affirm the judgment.

FACTUAL AND PROCEDURAL HISTORY

At approximately 7:30 p.m. on March 18, 2005, Riverside County Sheriff's Deputies Decker and Reyes were on patrol in the City of Moreno Valley. Deputy Decker saw defendant squatting in front of an apartment complex with a red plastic cup in his hand. The deputies stopped to speak to defendant in order to ascertain if defendant was loitering, or if he lived in the complex. Defendant told Deputy Decker that he lived in apartment No. 11. Defendant agreed to let the deputy search him for weapons.² The deputy felt a bulge in one of defendant's pockets, and defendant explained that it was his money.

Deputy Decker then went to apartment No. 11 and knocked on the door in order to confirm that defendant lived in the apartment. Mr. Woods answered the door and

¹ *Miranda v. Arizona* (1966) 384 U.S. 436.

² During the hearing on the motion to suppress evidence, Deputy Decker testified that defendant admitted being on parole prior to the deputy searching defendant. Because defendant was a parolee, Deputy Decker handcuffed defendant prior to the search.

said that defendant was his stepson, and that defendant lived with him in the apartment. While standing at the front door, Deputy Decker could smell marijuana. Deputy Decker asked Mr. Woods if he could search the apartment, and Mr. Woods said he was “more than welcome to come in.” Defendant sat on the sofa with Deputy Reyes, while Deputy Decker searched the apartment. Mr. Woods told Deputy Decker that he and defendant were the only occupants of the apartment.

Deputy Decker searched a linen closet, which had clothes in it. When the deputy searched a pair of pants in the closet, he found a “brick” of marijuana. Deputy Decker took the pants to the living room, and asked, ““Who owns these pants?”” Defendant said, ““Those are my pants. Why are you asking?”” Deputy Decker told defendant that he found marijuana in the pants. The pants were size 40.

After defendant admitted that the pants were his, Deputy Decker returned to the linen closet and found six sandwich bags containing marijuana in another pair of pants. The second pair of pants were also size 40. Deputy Decker did not find any pipes or other paraphernalia associated with consuming marijuana. Defendant did not display any symptoms of having smoked marijuana. Deputy Decker arrested defendant. At the police station, Deputy Decker found \$164 in defendant’s possession. The “brick,” or large bag, of marijuana weighed 89.1 grams. The smaller bags of marijuana, all together, weighed 21 grams.

Mr. Woods, defendant’s stepfather, testified that the marijuana was not his, he did not smoke marijuana, and he had not bought marijuana. Mr. Woods was a “very skinny” man, and Deputy Decker opined that Mr. Woods would not wear size 40 pants.

When defendant was taken to the sheriff's station, Deputy Decker looked at the pants that defendant was wearing, and the pants were size 40. Deputy Medina opined that the marijuana was possessed for purposes of resale because (1) a drug user does not typically separate his drugs into different baggies; and (2) sellers typically buy larger quantities of drugs than users, and defendant had a "fairly good amount" of marijuana.

DISCUSSION

A. COUNSEL'S BRIEF

We appointed counsel to represent defendant on appeal. After examining the record, counsel filed a brief raising no arguable issues and requesting an independent review of the record pursuant to *People v. Wende, supra*, 25 Cal.3d 436. We have independently examined the entire record and have determined that no arguable issues exist. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284; *People v. Kelly* (2006) 40 Cal.4th 106, 113-119; *People v. Wende, supra*, 25 Cal.3d at p. 441.)

B. DEFENDANT'S SUPPLEMENTAL BRIEF

On March 8, 2010, this court notified defendant that he had 30 days within which to submit, by supplemental brief, any grounds for appeal. We received a response from defendant on May 3, 2010. Defendant raises two issues that he believes deserve further briefing: (1) Deputy Decker did not inform defendant of his *Miranda* rights; and (2) Deputy Decker did not have a search warrant. We will briefly address these issues in order to forestall a later claim of ineffective assistance of counsel.

1. *MIRANDA RIGHTS*

In regard to defendant's *Miranda* assertion, we infer that defendant is making the following contention: further briefing is required regarding the trial court not suppressing defendant's statement that he owned the pants in which the marijuana was found, because defendant had not been given his *Miranda* warnings at the time of the statement.³

"*Miranda* warnings are not required during the course of a brief detention unless the suspect is placed under restraints normally associated with a formal arrest. When this occurs, *Miranda* warnings are required because the suspect understands the detention is not likely to be 'temporary and brief' and therefore is 'completely at the mercy of the police.' [Citation.] Handcuffing conveys this message because it is a distinguishing feature of a formal arrest. [Citations.]" (*People v. Pilster* (2006) 138 Cal.App.4th 1395, 1404-1405.)

Deputy Decker testified that he handcuffed defendant prior to searching defendant, because Deputy Decker believed there was a greater chance of an assault occurring when searching a parolee. Accordingly, we will assume that defendant is

³ In defendant's motion to suppress evidence, his trial counsel argued that defendant's statements must be suppressed because defendant's *Miranda* rights were violated. The motion contains little argument and no facts concerning this point. The argument concludes, "Ms. Allen's statements must be suppressed." We infer that the reference to Ms. Allen is a typographical error, and trial counsel intended to argue that defendant's statement that he owned the pants should have been suppressed for failure to Mirandize defendant.

correct that his *Miranda* rights were violated, because defendant was handcuffed when he was questioned.

The admission of a statement obtained in violation of *Miranda* is not grounds for reversal if the error is harmless beyond a reasonable doubt. (*People v. Peracchi* (2001) 86 Cal.App.4th 353, 363.) Defendant's stepfather was a slim man, approximately six feet tall and 130 pounds. The pants in which the marijuana was hidden were size 40. When defendant arrived at the police station, Deputy Decker looked at the pants defendant was wearing and saw that they were size 40. Based upon the foregoing evidence we can conclude beyond a reasonable doubt that the jury would have found that the pants belonged to defendant, even if defendant's statement—admitting that he owned the pants—had been excluded. Accordingly, the error of admitting defendant's non-Mirandized statement was harmless beyond a reasonable doubt. Accordingly, further briefing is not required on the issue of defendant's alleged *Miranda* violation.

2. *SEARCH WARRANT*

Defendant contends that further briefing should be ordered regarding Deputy Decker's lack of a search warrant. We disagree.

a) Consent

If a person freely consents to a search then his constitutional rights are not violated and any search or taking of evidence pursuant to his consent is not unreasonable. (*People v. Lazalde* (2004) 120 Cal.App.4th 858, 864.) Deputy Decker testified that defendant consented to a search of his person, and defendant's stepfather

consented to a search of their one-bedroom apartment. Accordingly, based upon the consent of defendant and defendant's stepfather, a search warrant was not needed.

b) Parole

“A law enforcement officer who is aware that a suspect is on parole and subject to a search condition may act reasonably in conducting a parole search even in the absence of a particularized suspicion of criminal activity, and such a search does not violate any expectation of privacy of the parolee.’ [Citation.]” (*People v. Pearl* (2009) 172 Cal.App.4th 1280, 1288.) At the hearing on defendant's suppression motion, Deputy Decker testified that defendant admitted being on parole before the deputy searched defendant's person or apartment. Accordingly, based upon this evidence, a search warrant was not needed.

c) Conclusion

Based upon the foregoing rules and evidence we conclude that further briefing is not required on the issue of Deputy Decker not having a search warrant.

DISPOSITION

The judgment is affirmed.

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/s/ MILLER

J.

We concur:

/s/ RAMIREZ

P. J.

/s/ McKINSTER

J.